IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7317 OF 2003

Jaysing Krishna Gatkul & Ors... Petitioners.

Versus

Vishnu Lakhu Gatkul & Ors..... Respondents.

Mr. Pratap Patil for the Petitioners.

Mr. A.B.Borkar for the Respondents.

CORAM : S. A. BOBDE, J.

DATED : JANUARY 18, 2005.

P.C.:

Rule. By consent, Rule made returnable and taken up for hearing forthwith.

2. Mr. Borkar, learned Counsel appears and waives service of Rule on behalf of the respondents.

3. The petitioners have challenged the judgment and order dated 5th February, 2002 passed by the Maharashtra Revenue Tribunal, Pune, Camp at Kolhapur. By the impugned order, the Maharashtra Revenue Tribunal has set aside the judgment and order dated 6th June, 2001 passed by the Sub-Divisional Officer,

Walwa in Tenancy Appeal No. 10 of 2001 and has restored the order dated 5th February, 2001 passed by the Tahsildar, Walwa in Tenancy Case No.32-G/Borgaon-806.

4. The dispute is regarding tenancy rights in Survey No. 198 admeasuring 90-R. According to the petitioners, the respondents who are their uncles are not entitled to any share in the tenancy rights and therefore they are not entitled to any certificate under Section 32M of the Bombay Tenancy and Agricultural Lands Act. After a remand order passed by the Assistant Collector, Walwa Division, the Tahsildar, Walwa by an order dated 5th February, 2001 cancelled the earlier Certificate granted by the Tahsildar in the present case and issued a fresh certificate under Section 32-M of the Act to all the parties i.e. the petitioners and the respondents to the extent of 1/4th share each. This order was challenged before the Sub-Divisional Officer, Walwa, who by an order dated 6th June, 2001 set aside the order of the Tahsildar.

5. The respondents carried the matter in revision before the Maharashtra Revenue Tribunal. By the impugned order dated 5th February, 2001 the Tribunal

set aside the order of the Sub-Divisional Officer and held that all the parties are entitled to equal shares in the suit land in accordance with the Hindu Law.

6. Mr. Patil, learned Counsel for the petitioners, contended that there was an earlier partition in the family and therefore respondents are not entitled to an equal share. However, the learned Counsel fairly accepted the position that there is no decree or order of any court declaring that there has already been a partition. The petitioners have also not been able to point out any evidence showing such a partition. Therefore, having regard to the entitlement of the parties to an equal share, there is no error of law apparent on the face of the record. There is no merit in the petition, which is hereby dismissed.

Sd/-

S. A. BOBDE, J.